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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 DANIAL R. GRAMMER,

7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 3:13-cv-05355-RBL-KLS

REPORT AND RECOMMENDATION

Noted for May 9, 2014

12
13 Plaintiff has brought this matter for judicial review of defendant's denial of his
14 applications for disability insurance and supplemental security income ("SSI") benefits. This
15 matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §
16 636(b)(1)(B) and Local Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v.
17 Weber, 423 U.S. 261 (1976). After reviewing the parties' briefs and the remaining record, the
18 undersigned submits the following Report and Recommendation for the Court's review,
19 recommending that for the reasons set forth below, defendant's decision to deny benefits be
20 reversed and this matter be remanded for further administrative proceedings.
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22 FACTUAL AND PROCEDURAL HISTORY

23 On September 13, 2010, plaintiff filed an application for disability insurance benefits and
24 another one for SSI benefits, alleging in both applications that he became disabled beginning
25 March 1, 2008. See ECF #11, Administrative Record ("AR") 19. Both applications were denied
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1 upon initial administrative review on November 1, 2010, and on reconsideration on February 18,
2 2011. See id. A hearing was held before an administrative law judge (“ALJ”) on December 13,
3 2011, at which plaintiff, represented by counsel, appeared and testified, as did a vocational
4 expert. See AR 37-72.

5 In a decision dated January 20, 2012, the ALJ determined plaintiff to be not disabled. See
6 AR 19-31. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals
7 Council on March 13, 2013, making that decision the final decision of the Commissioner of
8 Social Security (the “Commissioner”). See AR 1; 20 C.F.R. § 404.981, § 416.1481. On May 15,
9 2013, plaintiff filed a complaint in this Court seeking judicial review of the Commissioner’s final
10 decision. See ECF #3. The administrative record was filed with the Court on July 24, 2013. See
11 ECF #11. The parties have completed their briefing, and thus this matter is now ripe for the
12 Court’s review.

14 Plaintiff argues defendant’s decision to deny benefits should be reversed and this matter
15 should remanded for an award of benefits, or in the alternative for further administrative
16 proceedings, because the ALJ erred: (1) in evaluating the opinion evidence from Norma L.
17 Brown, Ph.D., Daniel M. Neims, Psy.D., and Hueini Chen, M.S.; (2) in discounting plaintiff’s
18 credibility; and (3) in finding plaintiff to be capable of performing other jobs existing in
19 significant numbers in the national economy. For the reasons set forth below, the undersigned
20 agrees the ALJ erred evaluating the opinion evidence from Dr. Brown and in finding plaintiff to
21 be capable of performing other jobs existing in significant numbers in the national economy, and
22 therefore in determining him to be not disabled. Also for the reasons set forth below, while the
23 undersigned finds that defendant’s decision to deny benefits should be reversed on this basis, this
24 matter should be remanded for further administrative proceedings.

DISCUSSION

The determination of the Commissioner that a claimant is not disabled must be upheld by the Court, if the “proper legal standards” have been applied by the Commissioner, and the “substantial evidence in the record as a whole supports” that determination. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); see also Batson v. Commissioner of Social Security Admin., 359 F.3d 1190, 1193 (9th Cir. 2004); Carr v. Sullivan, 772 F.Supp. 522, 525 (E.D. Wash. 1991) (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied in weighing the evidence and making the decision.”) (citing Brawner v. Secretary of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1987)).

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation omitted); see also Batson, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if supported by inferences reasonably drawn from the record.”). “The substantial evidence test requires that the reviewing court determine” whether the Commissioner’s decision is “supported by more than a scintilla of evidence, although less than a preponderance of the evidence is required.” Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one rational interpretation,” the Commissioner’s decision must be upheld. Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence sufficient to support either outcome, we must affirm the decision actually made.”) (quoting Rhinehart v. Finch, 438 F.2d 920, 921 (9th Cir. 1971)).¹

¹ As the Ninth Circuit has further explained:

. . . It is immaterial that the evidence in a case would permit a different conclusion than that which the [Commissioner] reached. If the [Commissioner]'s findings are supported by substantial evidence, the courts are required to accept them. It is the function of the [Commissioner], and not the court's to resolve conflicts in the evidence. While the court may not try the case *de novo*, neither may it abdicate its traditional function of review. It must

I. The ALJ's Evaluation of the Opinion Evidence from Dr. Brown

The ALJ is responsible for determining credibility and resolving ambiguities and conflicts in the medical evidence. See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998). Where the medical evidence in the record is not conclusive, “questions of credibility and resolution of conflicts” are solely the functions of the ALJ. Sample v. Schweiker, 694 F.2d 639, 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” Morgan v. Commissioner of the Social Sec. Admin., 169 F.3d 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the medical evidence “are material (or are in fact inconsistencies at all) and whether certain factors are relevant to discount” the opinions of medical experts “falls within this responsibility.” Id. at 603.

In resolving questions of credibility and conflicts in the evidence, an ALJ's findings “must be supported by specific, cogent reasons.” Reddick, 157 F.3d at 725. The ALJ can do this “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” Id. The ALJ also may draw inferences “logically flowing from the evidence.” Sample, 694 F.2d at 642. Further, the Court itself may draw “specific and legitimate inferences from the ALJ’s opinion.” Magallanes v. Bowen, 881 F.2d 747, 755, (9th Cir. 1989).

The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can

scrutinize the record as a whole to determine whether the [Commissioner]'s conclusions are rational. If they are . . . they must be upheld.

Sorenson, 514 F.2dat 1119 n.10.

only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record.” Id. at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or her. Vincent on Behalf of Vincent v. Heckler, 739 F.3d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence has been rejected.” Id.; see also Cotter v. Harris, 642 F.2d 700, 706-07 (3rd Cir. 1981); Garfield v. Schweiker, 732 F.2d 605, 610 (7th Cir. 1984).

In general, more weight is given to a treating physician’s opinion than to the opinions of those who do not treat the claimant. See Lester, 81 F.3d at 830. On the other hand, an ALJ need not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and inadequately supported by clinical findings” or “by the record as a whole.” Batson v. Commissioner of Social Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); see also Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). An examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining physician.” Lester, 81 F.3d at 830-31. A non-examining physician’s opinion may constitute substantial evidence if “it is consistent with other independent evidence in the record.” Id. at 830-31; Tonapetyan, 242 F.3d at 1149.

With respect to the medical opinion evidence from Dr. Brown, the ALJ found:

On March 4, 2010, Norma Brown, Ph.D., evaluated the claimant and assessed his Global Assessment of Functioning (GAF) at 45. She opined that the claimant had no limitation with simple and complex instructions, learning new tasks, exercising judgment, making decisions, and performing routine tasks. Dr. Brown opined that the claimant was moderately limited in the abilities to care for himself, interact appropriately in public contacts, and maintain appropriate behavior in a work setting. She opined that the claimant was markedly limited in the ability to relate appropriately to coworkers and supervisors. Dr. Brown opined that the claimant was severely limited in the ability to respond appropriately to and tolerate the pressures and expectations of a normal work setting. She opined that the claimant was unable to maintain competitive employment at present due to severe addiction issues and severe

1 mental health concerns. Dr. Brown opined that even after drug treatment the
 2 claimant likely could not maintain competitive employment until his mental
 3 health problems were addressed (Exhibit 1F). I assign little weight to Dr.
 4 Brown's opinion. I accept that the claimant's symptoms limit his ability to
 5 interact with the public, but do not find that he is significantly limited in the
 6 ability to relate appropriately to coworkers and supervisors. On the function
 7 report he denied problems getting along with family, friends, neighbors and
 8 others. He reported he got along with authority figures okay and denied that
 9 he was ever fired or laid off because of problems getting along with other
 10 people (Exhibit 4E). I do not accept Dr. Brown's opinion that the claimant is
 11 severely limited in the ability to respond appropriately to and tolerate the
 12 pressures and expectations of a normal work setting, which was primarily
 13 based on the claimant's less than fully credible self-report. I note that Dr.
 14 Brown's GAF assessment included consideration of factors such as the
 15 claimant's unemployment and recent incarceration, which do not provide a
 16 basis for awarding disability benefits. I further note that the claimant
 17 completed inpatient chemical dependence treatment in June 2010 and has
 18 remained clean and sober since that time with the exception of a few brief
 19 relapses.

20 AR 26-27.

21 The undersigned agrees with plaintiff that the ALJ erred in rejecting Dr. Brown's opinion
 22 concerning his ability to relate appropriately to co-workers and supervisors based on statements
 23 in the function report plaintiff completed.² While it is true that plaintiff checked a box on that
 24 report indicating he did not have any problems getting along with family, friends, neighbors or
 25 others, checked another box indicating he had never been fired or laid off from a job because of
 26 getting along with other people, and wrote "OK" in response to the question of how well he got
 along with authority figures, he also stated he had "a hard time with people," feeling that they
 were watching, following and wanting to hurt him. AR 222-23. These additional statements
 comport with other testimony and reports concerning problems socializing and being with other
 people contained in the record. See AR 46, 52, 62-64, 227, 341-42. Although it is the duty of the

² See Morgan, 169 F.3d at 601-02 (upholding ALJ's rejection of physician's conclusion that claimant suffered from marked limitations in part on basis that claimant's reported activities of daily living contradicted it); Magallanes, 881 F.2d at 754 (finding ALJ properly rejected physician's opinion in part on basis that it conflicted with claimant's own subjective pain complaints).

1 ALJ to resolve conflicts and ambiguities in the evidence in the record, the ALJ's failure to
 2 discuss this other, contradictory testimony and self-reporting indicates that she did not properly
 3 do so in this instance.

4 The undersigned further agrees with plaintiff that it is not at all clear Dr. Brown relied
 5 primarily on his self-reporting in finding him to be severely limited in his ability to respond
 6 appropriately to and tolerate the pressures and expectations of a normal work setting.³ Dr.
 7 Brown's evaluation report suggests that she relied at least in part on what she observed of
 8 plaintiff during her evaluation of him. For example, in support of her opinion here Dr. Brown
 9 noted that plaintiff was "very fragile," which is not out of line with the agitation and restlessness,
 10 rapid speech, lability, "high" anxiety, pressured/accelerated thought processes, paranoid thought
 11 content, and extreme impulsivity she noted in regard to plaintiff's mental status examination. AR
 12 254, 257; see also Clester v. Apfel, 70 F.Supp.2d 985, 990 (S.D. Iowa 1999) (results of mental
 13 status examination provide basis for psychiatric disorder diagnosis, just as physical examination
 14 results provide basis for diagnosis of physical illness or injury). It is unclear whether the ALJ
 15 properly considered this evidence, given that she did not discuss it when presenting her basis for
 16 rejecting Dr. Brown's opinion here. That failure to do so was improper.

17 Lastly, the undersigned agrees as well with plaintiff that to the extent the ALJ rejected
 18 Dr. Brown's opinions on the basis that he remained essentially clean and sober since June 2010,
 19 she erred. As the ALJ herself noted, although Dr. Brown opined that plaintiff was "unable to
 20 maintain competitive employment at the present time due to severe addiction as well as severe
 21 mental health concerns" (AR 254), she went on to comment that "even after drug treatment," his
 22 "severe mental health problems . . . will likely severely interfere with his ability to work" and
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24 ³ See Morgan, 169 F.3d at 601 (physician's opinion premised to large extent on claimant's own accounts of his or
 25 her symptoms and limitations may be disregarded where those complaints have been properly discounted).

1 "will likely not be able to maintain competitive employment until these issues are addressed"
2 (AR 258). Thus, Dr. Brown apparently believed that even in the absence of substance abuse his
3 mental health problems would continue to be disabling.

4 II. The ALJ's Findings at Step Five

5 Defendant employs a five-step "sequential evaluation process" to determine whether a
6 claimant is disabled. See 20 C.F.R. § 404.1520; 20 C.F.R. § 416.920. If the claimant is found
7 disabled or not disabled at any particular step thereof, the disability determination is made at that
8 step, and the sequential evaluation process ends. See id. If a disability determination "cannot be
9 made on the basis of medical factors alone at step three of that process," the ALJ must identify
10 the claimant's "functional limitations and restrictions" and assess his or her "remaining
11 capacities for work-related activities." Social Security Ruling ("SSR") 96-8p, 1996 WL 374184
12 *2. A claimant's residual functional capacity ("RFC") assessment is used at step four to
13 determine whether he or she can do his or her past relevant work, and at step five to determine
14 whether he or she can do other work. See id.

15 Residual functional capacity thus is what the claimant "can still do despite his or her
16 limitations." Id. It is the maximum amount of work the claimant is able to perform based on all
17 of the relevant evidence in the record. See id. However, an inability to work must result from the
18 claimant's "physical or mental impairment(s)." Id. Thus, the ALJ must consider only those
19 limitations and restrictions "attributable to medically determinable impairments." Id. In
20 assessing a claimant's RFC, the ALJ also is required to discuss why the claimant's "symptom-
21 related functional limitations and restrictions can or cannot reasonably be accepted as consistent
22 with the medical or other evidence." Id. at *7.

23 The ALJ in this case found plaintiff had the residual functional capacity to perform work

1 with “**no exertional restrictions**,” but would be limited to “**remember[ing] and execut[ing]**
2 **simple instructions**,” “**avoid[ing] working with the public**” and working where there were
3 **“minimal changes in the workplace routine and environment.”** AR 23 (emphasis in original).

4 If a claimant cannot perform his or her past relevant work, at step five of the disability evaluation
5 process the ALJ must show there are a significant number of jobs in the national economy the
6 claimant is able to do. See Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. §
7 404.1520(d), (e), § 416.920(d), (e). The ALJ can do this through the testimony of a vocational
8 expert or by reference to defendant’s Medical-Vocational Guidelines (the “Grids”). Tackett, 180
9 F.3d at 1100-1101; Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2000).

10 An ALJ’s findings will be upheld if the weight of the medical evidence supports the
11 hypothetical posed by the ALJ. See Martinez v. Heckler, 807 F.2d 771, 774 (9th Cir. 1987);
12 Gallant v. Heckler, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert’s testimony
13 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. See
14 Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ’s description of the
15 claimant’s disability “must be accurate, detailed, and supported by the medical record.” Id.
16 (citations omitted). The ALJ, however, may omit from that description those limitations he or
17 she finds do not exist. See Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

18 At the hearing, the ALJ posed a hypothetical question to the vocational expert containing
19 substantially the same limitations as were included in the ALJ’s assessment of plaintiff’s residual
20 functional capacity. See AR 69. In response to that question, the vocational expert testified that
21 an individual with those limitations – and with the same age, education and work experience as
22 plaintiff – would be able to perform other jobs. See AR 69-70. Based on the testimony of the
23 vocational expert, the ALJ found plaintiff would be capable of performing other jobs existing in
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1 significant numbers in the national economy. See AR 29-30.

2 Plaintiff argues, and the undersigned agrees, that in light of the ALJ's improper rejection
3 of Dr. Brown's opinions, it cannot be said at this time that the hypothetical question posed by the
4 ALJ completely and accurately reflects all of his mental functional limitations, and therefore that
5 the ALJ's reliance on the ALJ's testimony in response thereto to find him disabled at step five is
6 supported by the substantial evidence in the record. The undersigned agrees as well that the
7 hypothetical question does not accurately reflect all of the moderate mental functional limitations
8 contained in the assessments provided by non-examining psychologists, Vincent Gollogly, PhD.,
9 and Michael Brown, Ph.D., despite the ALJ's statement that he had assigned "significant weight"
10 to those assessments. In regard to that medical opinion evidence the ALJ specifically found in
11 relevant part:

13 . . . On October 5, 2010, State agency psychological consultant Vincent
14 Gollogly, Ph.D., opined that psychiatric symptoms moderately interfered with
15 the claimant's ability to sustain concentration and persistence. He opined that
16 the claimant should avoid work that entailed extensive public contact, but
17 could work with a familiar workgroup. Dr. Gollogly opined that the
18 claimant's anxiety symptoms moderately interfered with the claimant's ability
19 to adapt to changes in the work setting. He opined that the claimant was able
20 to be aware of normal workplace hazards and take appropriate precautions.
21 Dr. Gollogly opined that the claimant could travel to unfamiliar places
22 (Exhibits 3A, 4A). On February 18, 2011, State agency psychological
23 consultant Michael Brown, Ph.D., reviewed the evidence and concurred with
24 Dr. Gollogly's assessment (Exhibit 5A, 8A). I assign significant weight to the
25 State agency psychological consultants' mental assessments. Although they
26 did not examine the claimant, they are experts in evaluating the psychological
issues in disability claims before the Social Security Administration and their
opinions are appropriately accorded weight . . . I accept that psychiatric
symptoms moderately interfere with the claimant's ability to sustain
concentration and persistence. However, his ability to concentrate and persist
at tasks is sufficient for him to remember and execute simple instructions on a
consistent basis. I accept that the claimant's anxiety symptoms moderately
interfere with his ability to adapt to changes in the work setting.
Consequently, I find there should be minimal changes in the workplace
routine and environment.

1 AR 26.

2 Defendant argues the moderate limitation in plaintiff's ability to sustain his concentration
 3 and persist Drs. Gollogly and Brown found comports with the ALJ's restriction to remembering
 4 and executing simple instructions. But as plaintiff points out, the evaluation forms those medical
 5 sources completed separately address the ability to understand, remember and carry out simple,
 6 as well as more detailed, instructions, and therefore a restriction in that area would appear to be
 7 distinct from the ability to sustain concentration and persist. See AR 80, 90, 101, 114. Dr.
 8 Gollogly and Dr. Brown also found that plaintiff was moderately limited in his ability to work in
 9 coordination with or proximity to and get along with others, that he could work with "a familiar
 10 workgroup," and that he was moderately limited in his ability to accept instructions and respond
 11 appropriately to criticism from supervisors (AR 80-81, 90-91, 101-02, 114-15), which is not
 12 reflected in the ALJ's RFC assessment or her hypothetical question. Also not reflected therein is
 13 the moderate limitation in plaintiff's ability to complete a normal workday or workweek and
 14 perform at a consistent pace which Drs. Brown and Gollogly assessed as well. See AR 80, 90.

17 III. This Matter Should Be Remanded for Further Administrative Proceedings

18 The Court may remand this case "either for additional evidence and findings or to award
 19 benefits." Smolen, 80 F.3d at 1292. Generally, when the Court reverses an ALJ's decision, "the
 20 proper course, except in rare circumstances, is to remand to the agency for additional
 21 investigation or explanation." Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004) (citations
 22 omitted). Thus, it is "the unusual case in which it is clear from the record that the claimant is
 23 unable to perform gainful employment in the national economy," that "remand for an immediate
 24 award of benefits is appropriate." Id.

26 Benefits may be awarded where "the record has been fully developed" and "further

1 administrative proceedings would serve no useful purpose.” Smolen, 80 F.3d at 1292; Holohan
 2 v. Massanari, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, they should be awarded where:

3 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
 4 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
 5 before a determination of disability can be made, and (3) it is clear from the
 6 record that the ALJ would be required to find the claimant disabled were such
 7 evidence credited.

8 Smolen, 80 F.3d 1273 at 1292; McCartey v. Massanari, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

9 Because issues still remain in regard to the medical opinion evidence in the record concerning
 10 plaintiff’s mental impairments and limitations discussed above, and therefore in regard to his
 11 residual functional capacity and ability to perform other jobs existing in significant numbers in
 12 the national economy, remand for further consideration of those issues is warranted.

13 Plaintiff argues that because the ALJ erred in rejecting the opinions of Norma Brown,
 14 Ph.D., they should be credited as true. Plaintiff is correct that where the ALJ has failed “to
 15 provide adequate reasons for rejecting the opinion of a treating or examining physician,” that
 16 opinion generally is credited “as a matter of law.” Lester, 81 F.3d at 834 (citation omitted). But
 17 application of this “credit as true” rule “is not mandatory when, even if the evidence at issue is
 18 credited, there are ‘outstanding issues that must be resolved before a proper disability
 19 determination can be made.’” Luna v. Astrue, 623 F.3d 1032, 1035 (9th Cir. 2010) (quoting
 20 Vasquez v. Astrue, 572 F.3d 586, 593 (9th Cir.2009)); see also Bunnell v. Barnhart, 336 F.3d
 21 1112, 1116 (9th Cir. 2003). Such is the case here.

22 First, given that error has been established only in regard to the above-discussed medical
 23 opinion sources, it is far from clear that the ALJ would be required to find plaintiff disabled at
 24 this time. In addition, the moderate limitations found by the two non-examining psychologists
 25 are at odds with the disability opinions Dr. Brown, the evaluating psychologist, provided. These

are outstanding issues, as are the others noted above, that need resolution on remand. Plaintiff asserts that “[w]hen several of [the limitations the two non-examining psychologists assessed] were presented to the vocational expert, she testified that [he] would not be able to sustain competitive employment.” ECF #18, p. 19. But as defendant points out, plaintiff has not come forth with any evidence that either psychologist viewed the moderate limitations they assessed to be as restrictive as plaintiff’s counsel presented them to be at the hearing. See AR 70-71. As such, the undersigned declines to apply the credit-as-true rule in this case.

CONCLUSION

Based on the foregoing discussion, the undersigned recommends the Court find the ALJ improperly concluded plaintiff was not disabled. Accordingly, the undersigned recommends as well that the Court reverse defendant's decision to deny benefits and remand this matter for further administrative proceedings in accordance with the findings contained herein.

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 72(b), the parties shall have **fourteen (14) days** from service of this Report and Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. See Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 9, 2014**, as noted in the caption.

DATED this 17th day of April, 2014.


Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge